
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-02-CF-712
)	
Mark A. Clay)	NAL/Acct. No. 200332340003
Huntington, West Virginia)	
)	FRN: 0005-3791-77

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 29, 2003

By the District Director, Columbia Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Mark A. Clay ("Clay") has apparently violated Section 301 of the Communications Act of 1934, as amended ("Act").¹ Clay operated an FM broadcast station on the frequency 98.1 MHz at 5666 Lynn Creek Road, Huntington, West Virginia without a license. We conclude that Clay is apparently liable for forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On May 30, 2002, an agent from the Commission's Columbia Office, operating an FCC direction-finding vehicle in the Huntington, West Virginia, area monitored an unidentified FM broadcast station on the frequency 98.1 MHz. Using direction-finding equipment and techniques, the agent determined that the source of the signal on 98.1 MHz was an antenna near a trailer at 5666 Lynn Creek Road in Huntington, West Virginia. While near the station, the agent measured the field strength of the signal. The broadcast station exceeded the permissible level for a non-licensed radio transmitter by 1,431 times. Accordingly, a license was required for the operation of the broadcast station. Based on the Commission's records, no license had been issued for the operation of any FM broadcast station at this location.

3. Later in the day on May 30, 2002, while the station continued operation, the agent inspected the radio station. The agent found Clay at the station in control of the transmitter. Clay admitted to operating the station without a license. Clay informed the agent that he held an amateur radio station license N8QYK. The agent warned Clay concerning the unlicensed FM broadcast operation. Clay shut the transmitter off just after the agent's departure.

4. On June 25, 2002, the Columbia Office sent, via certified mail, a letter addressed to Clay, 5666 Lynn Creek Road, Huntington, West Virginia 25704. The letter warned Clay that operation of the unlicensed radio station on the frequency 98.1 MHz violated Section 301 of the Act and directed the Clay

¹ 47 U.S.C. § 301.

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to terminate operation of the unlicensed station immediately. The letter requested Clay to submit a written response within 10 days of receipt of the letter.

5. By letter dated July 2, 2002, Clay submitted a response to the Columbia Office. He acknowledged that he operated the broadcast station at 5666 Lynn Creek Road, Huntington, West Virginia, which transmitted on the frequency 98.1 MHz. He stated that he had ceased operation of the station after the FCC inspection on May 30, 2002.

6. On November 13, 2002, a Commission agent observed radio broadcasting on 98.1 MHz, and positively identified the source of the unauthorized transmissions as 5666 Lynn Creek Road, Huntington, West Virginia. While near the station, the agent measured the field strength of the signal. The broadcast station exceeded the permissible level for a non-licensed radio transmitter by 7,403 times. There was no evidence of a Commission authorization for this operation in Huntington, West Virginia.

7. On November 14, 2002, Commission agents observed radio broadcasting on 98.1 MHz and positively identified the source of the unauthorized transmissions as 5666 Lynn Creek Road, Huntington, West Virginia. While near the station, the agents measured the field strength of the signal. The broadcast station exceeded the permissible level for a non-licensed radio transmitter by 7,986 times. There was no evidence of a Commission authorization for this operation in Huntington, West Virginia.

8. On November 14, 2002, Commission agents inspected the radio station. Clay was at the station and in control of the transmitter. During the inspection, Clay admitted to operating the station, and knowing that the transmitted signal level was far in excess of that permitted for operation with no Commission authorization.

III. DISCUSSION

9. Section 301 of the Act prohibits any person from using or operating any apparatus for the transmission of energy or communications or signals by radio except under and in accordance with the Act and with a license in that behalf granted under the provisions of the Act. On May 30, 2002, November 13, 2002, and November 14, 2002, Clay operated an FM broadcast station on the frequency 98.1 MHz at 5666 Lynn Creek Road, Huntington, West Virginia, without a license. Clay would not have been required to obtain a license to operate the stations if the signal strengths did not exceed the FCC limits specified in Section 15.239 of the Rules.² However, on May 30, 2002, November 13, 2002, and November 14, 2002, the agents determined that the signal strength of the broadcast station exceeded the FCC limits by at least 1,431 times.

10. By letter dated June 25, 2002, the Columbia Office warned Clay that his operation of a broadcast station without a license was in violation of Section 301 of the Act. Commission agents informed Clay that his station exceeded the limits specified in Section 15.239 of the Rules, and he did not have a license to operate the station. Further, Clay holds an FCC amateur radio service license. Therefore, Mark A. Clay was aware prior to November 13, 2002, and November 14, 2002 of his responsibility to properly measure, adjust and maintain his broadcast station to avoid subsequent

² 47 C.F.R. § 15.239

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violations of Section 301 of the Act.

11. Based on the evidence before us, we find that Clay apparently willfully³ and repeatedly⁴ violated Section 301 of the Act. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*")⁵, sets the base forfeiture amount for unlicensed operation at \$10,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁶ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a ten thousand dollar (\$10,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁷ and Sections 0.111, 0.311 and 1.80 of the Rules⁸ Clay is hereby NOTIFIED of his APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 301 of the Act.

13. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Clay SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332340003, and FRN 0005-3791-77.

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111 and 0.311.

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15. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332340003.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

18. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

19. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Mark A. Clay, 5666 Lynn Creek Road, Huntington, West Virginia 25704.

FEDERAL COMMUNICATIONS COMMISSION

Charles C. Magin
District Director
Columbia Office

Attachment A: Condensed List of Small Entities

⁹ See 47 C.F.R. § 1.1914.